

### SUMMARY OF THE REJECTIONS/OBJECTIONS

Claim 4 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. Claims 1, 5, 7, 11, 14, 17, 18 and 20 have been rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent Number 6,823,462 issued to Cheng et al ("*Cheng*"). Claims 2-4, 6, 8-10, 12-13, 15-16 and 19 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Cheng* in view of U.S. Patent Number 6,823,462 issued to Bendinelli et al. ("*Bendinelli*"). The rejections are respectfully traversed.

### RESPONSE TO REJECTIONS NOT BASED ON THE PRIOR ART

#### *Indefiniteness Rejections*

Claim 4 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action states Claim 4 is indefinite because the "specific protocol" set forth is unclear and there is no specific scope addressed in the specification as to where the "specific" protocol is referred (i.e., what is the scope with respect to). Applicant suggests review of FIG. 3 and page 13, lines 1-12 of the application, where the scope of "specific protocol," as used in Claim 4, is addressed and the usage of "specific protocol" becomes clear.

Otherwise, at block 306, the initiator peer determines whether one of the packet summary and the TED response identifies IP, **and the other identifies a specific protocol.** (Page 13, lines 1-2).

It is clear that the scope of the "specific protocol," as used in the application, comprises an individual protocol in a species of protocols other than IP. The adjective "specific" is used to delineate this distinct protocol as opposed to IP, and indicate that this "specific protocol" is relating to or characterizing one protocol of a species. Applicant respectfully requests reconsideration and withdrawal of the rejection.

RESPONSE TO REJECTIONS BASED ON THE PRIOR ART

I. Claims 1, 5, 7, 11, 14, 17, 18 and 20 have been rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent Number 6,823,462 issued to Cheng et al ("*Cheng*").

The rejections are respectfully traversed.

A. CLAIM 1

Applicants respectfully submit that *Cheng* does not anticipate the Independent Claim 1 for the following reasons. First, *Cheng* does not disclose the claimed "sending... a first **description of network traffic** that is to be protected..." nor the claimed "receiving... a second **description of network traffic** that is to be protected..." The Office Action cited FIG. 4 and the following for this claim limitation (Office Action, page 3, item 3):

IKE assumes that no secure channel, i.e., tunnel, currently exists and therefore it must initially establish one to protect any ISAKMP messages. (column 7, lines 23-25)

...

FIG. 4 illustrates the flow of messages from the initiator node 110 to the responding node 110. The initiator node 110 is the node 110 that initiates sending messages or data in the tunnel 120. The responder node 110 is the node 110 that responds to the messages and data sent by the initiator node 110 across the tunnel 120. An example of a responder node 110 maybe the server node 110A of FIG. 1. An example of an initiator node 110 may be any of the client nodes, e.g., nodes 110B-D of FIG. 1. In the first message, the initiator node 110 **transfers its security policy to the responding node 110**. The responding node 110 **transfers its security policy to the initiator node 110 in the second message if the security policy of the responding node 110 matches the security policy of the initiator node 110**. In another embodiment, the responding node 110 transfers its security policy to the initiator node 110 in the second message if both nodes 110 agree on the same set of protection suites in their security policy at any point in time. (Column 7, lines 35-52)

Nothing in the cited section refers to, teaches, or suggests the claimed "description of network traffic that is to be protected...." The only "description of network traffic" being transmitted in *Cheng* is a "security policy." According to *Cheng*, "The VPN security policy typically describes **the characteristics of the protection for a particular traffic profile**." (*Cheng*, column 6, lines 53-54)

In no way does *Cheng*'s "description of network traffic" (*i.e.*, a "security policy" which is "characteristics of the protection for a particular traffic profile") teach or suggest the description of network traffic as claimed in the present application. The present application discloses an "initiator peer" generating "an exploratory packet for the purpose of discovering the identity of the endpoint of the secure tunnel that is to be established," also known as a TED probe. (page 9, lines 19-22) The TED probe sent by the initiator peer comprises a Vendor Payload, ID Payload, Proxy Address, and Summary Packet. (page 11, lines 10-11) Of these, the Summary Packet comprises:

- (1) a hash value based on a string value that identifies the maker of equipment that is sending the probe, such as an MD5 hash of the string "Cisco TED Probe version #3";**
- (2) a protocol version number associated with the endpoint discovery process as a whole;**
- (3) an IP protocol version value, such as "4" for IPv4, or "6" for IPv6, etc.;**
- (4) an IP address value of the source end host;**
- (5) an IP address value of the destination end host;**
- (6) a source port value from packet P, if any; and**
- (7) a destination port value from packet P, if any.**

(pages 11-12, lines 19-24, 1-2)

As is now obvious, the "description of network traffic that is to be protected" in the present application is not taught or suggested by *Cheng*'s security policy. An anticipation rejection cannot stand if a rejected claim contains one or more elements, limitations or steps that are not found in the cited prior art reference. *See Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

Second, *Cheng* does not disclose the claimed "creating and storing a third **description of network traffic that is to be protected based on determining a logical intersection of the first description of network traffic and the second description of network traffic.**"

The Office Action cited the following for this claim limitation (Office Action, page 3, item 3):

The second phase refers to the negotiation of the security association for Internet Protocol (IP) security. Upon the successful completion of the negotiation of the phase two security association, data may be transferred between the plurality of nodes 110 establishing the tunnel 120. (Column 7, lines 26-30)

The Office Action claims the cited language above teaches "establishing a tunnel having a tunnel definition by negotiating a common security policy associated with the client and the server."

Nothing in the cited section refers to, teaches, or suggests the claimed "creating and storing a third **description of network traffic** that is to be protected **based on determining a logical intersection of the first description of network traffic and the second description of network traffic.**" Neither does the Examiner's assertion that the cited language teaches "negotiating a common security policy" teach the claimed limitation. The cited language only describes some generic "negotiation" between nodes. Further, as discussed *supra*, the claimed limitation "description of network traffic" is not taught by *Cheng*.

By comparison, the present application teaches, among other things, a method for determining a common subset of proxies based on the full proxy of the peers. *Cheng* simply teaches a negotiation between nodes wherein a secure tunnel is established and data transferred if the "security policy of the responding node matches the security policy of the initiator node," (*Cheng*, column 7, lines 46-48) or if "both nodes agree on the same set of protection suites in their security policy at any point in time." (*Cheng*, column 7, lines 50-52)

This is strikingly different from the claimed limitation, which allows for creating **and storing a description of network traffic**. *Cheng* teaches neither the claimed description of network traffic nor does it teach storing this information. This "description of network traffic" is a logical intersection that, in one embodiment, determines the protocol, proxy address, and port values based upon characteristics of both the initiator peer and responder peer. *See* FIG. 3 and Section 3.0.

Because *Cheng* fails to disclose, teach, suggest, or in any way render obvious the limitations of Claim 1, Applicant respectfully submits that, for at least the reasons stated above, Claim 1 is allowable over the art of record and is in condition for allowance.

B. CLAIMS 5, 7, 11

Claims 5, 7 and 11 are dependent claims, each of which depends (directly or indirectly) on Claim 1. Each of Claims 5, 7 and 11 is therefore allowable for the reasons given above for the claim on which it depends. In addition, each of Claims 5, 7 and 11 introduces one or more additional limitations that independently render it patentable. However, due to the fundamental differences already identified, to expedite the positive resolution of this case a separate discussion of those limitations is not included at this time. Therefore, it is respectfully submitted that Claims 5, 7 and 11 are allowable for the reasons given above with respect to Claim 1.

C. CLAIM 14

Independent Claim 14 is a computer-readable medium claim containing features that are similar to those described above with respect to Claim 1. Therefore, based on at least the reasons stated above with respect to Claim 1, Applicant respectfully submits that Claim 14 is allowable over the art of record and is in condition for allowance.

D. CLAIM 17

Independent Claim 17 is a method claim that contains features similar to those described above with respect to Claim 1. Specifically, Claim 17 claims, among other things, a "description of network traffic" that is not taught by *Cheng* as discussed above. Claim 17 further claims

[r]eceiving at the second network device a third description of network traffic that is to be protected from the first network device **based on a logical intersection of the first description of network traffic and the second description of network traffic...**

As discussed above, *Cheng* fails to disclose, teach, suggest, or in any way render obvious the limitations of Claim 17. Therefore, based on at least the reasons stated above with

respect to Claim 1, Applicant respectfully submits that Claim 17 is allowable over the art of record and is in condition for allowance.

E. CLAIM 18

Independent Claim 18 is a computer-readable medium claim containing features that are similar to those described above with respect to Claim 17. Therefore, based on at least the reasons stated above with respect to Claim 17 and Claim 1, Applicant respectfully submits that Claim 18 is allowable over the art of record and is in condition for allowance.

F. CLAIM 20

Independent Claim 20 is an apparatus claim containing features that are similar to those described above with respect to Claim 1. Therefore, based on at least the reasons stated above with respect to Claim 1, Applicant respectfully submits that Claim 14 is allowable over the art of record and is in condition for allowance.

**II. Claims 2-4, 6, 8-10, 12-13, 15-16 and 19 have been rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over *Cheng* in view of U.S. Patent Number 6,823,462 issued to Bendinelli et al. ("*Bendinelli*").**

A. CLAIM 19

The rejection is respectfully traversed, because the Office Action fails to factually support any prima facie conclusion of obviousness.

Specifically, *Cheng* and *Bendinelli*, either individually or in combination, fail to disclose, teach or suggest all the claim limitations of Claim 19. Claim 19 is an apparatus claim containing features that are similar to those described above with respect to Claim 1.

As discussed above, *Cheng* fails to disclose the claimed "creating and storing a third description of network traffic that is to be protected **based on determining a logical intersection of the first description of network traffic and the second description of network traffic**" in the independent Claim 1, and also fails to disclose the claimed "**description of network traffic**" in the independent Claim 1.

Similarly, *Bendinelli* does not disclose, teach, or suggest the aforementioned two claim limitations. Instead, *Bendinelli* focuses on “methods and systems... for enabling a network between a first and a second processor using at least one additional processor separate from the first and second processors.” (*Bendinelli*, Abstract).

Notwithstanding the fact that neither *Cheng* nor *Bendinelli* disclose “creating and storing a third description of network traffic that is to be protected based on determining a logical intersection of the first description of network traffic and the second description of network traffic” in the independent Claim 1, and also fail to disclose the claimed “description of network traffic” in the independent Claim 1, the Applicant respectfully submits that there is nothing in either *Cheng* or *Bendinelli* that teaches or suggests combining their respective teachings.

As stated in the Federal Circuit decision *In re Dembiczak*, 50 USPQ.2d 1617 (Fed. Cir. 1999), (citing *Gore v. Garlock*, 220 USPQ 303, 313 (Fed. Cir. 1983)), “it is very easy to fall victim to the insidious effect of the hindsight syndrome where that which only the inventor taught is used against its teacher.” *Id.* The Federal Circuit stated in *Dembiczak* “that the best defense against subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or suggestion to combine prior art references.” *Id.* Thus, the Federal Circuit explains that a proper obviousness analysis requires “**particular factual findings** regarding the locus of the suggestion, teaching, or motivation to combine prior art references.” *Id.* (emphasis added).

In particular, the Federal Circuit states:

“We have noted that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved...although ‘the suggestion more often comes from the teachings of the pertinent references’...The range of sources available, however, does **not diminish the requirement for actual evidence**. That is, the **showing must be clear and particular**...Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence.’” *Id.* (emphasis added; internal citations omitted).

Neither *Cheng* nor *Bendinelli* show any suggestion, teaching, or motivation to combine their teachings, nor does the Office Action provide a “clear and particular” showing

of the suggestion, teaching, or motivation to combine their teachings. In fact, the only motivation provided in the Office Action is the hindsight observation that by combining features of those references, one may achieve the benefits achieved from the invention as described and claimed in the application. It is respectfully submitted that such a hindsight observation is not consistent with the Federal Circuit's requirement for "particular factual findings."

Applicant respectfully submits that, for at least the reasons stated above, Claim 19 is allowable over the art of record and is in condition for allowance.

**B. CLAIMS 2-4, 6, 8-10, 12-13, 15-16**

Because Claims 2-4, 6, 8-10, 12-13 and 15-16 either directly or indirectly depend on Claims 1 and 17, they are patentable over *Cheng* in view of *Bendinelli* for at least the same reasons set forth above in Part I and Part II, Section A.

**III. Conclusion**

For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

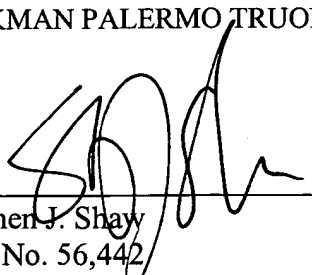
The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

Please charge any shortages or credit any overages to Deposit Account No. 50-1302.



Respectfully submitted,

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Attachments

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